

[REDACTED]

[REDACTED]

[REDACTED]

AUG 25 1981

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(13) of the Internal Revenue Code submitted on [REDACTED].

The information submitted with the application indicates that you still operate for the benefit of a cemetery owned by [REDACTED]. Therefore, our letter of [REDACTED], denying you exemption under sections 501(c)(3) and 501(c)(13) of the Code remains in effect.

If you do not agree with the conclusion that you do not qualify for exemption under section 501(c)(13) of the Code, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you have any further questions, please contact the individual listed above.

Sincerely yours,

[REDACTED]
District Director

cc: [REDACTED]

Encl. :
Publication 892

JUN 22 1981

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The evidence presented discloses that you were incorporated [REDACTED], under the non-profit laws of the State of [REDACTED].

Your purposes, briefly stated, are to dispose of and bury human bodies by burial and cremation and to sell lots and other necessary and incidental services connected therewith. You also propose to acquire the old cemetery property and undertake a program to restore and renovate the grounds, salvage, restore and preserve the numerous monuments and provide a permanent source of management and funds for these purposes.

Your primary activities at this time are clearing and renovating the cemetery property.

The original [REDACTED] was incorporated in [REDACTED] and was the principal cemetery in [REDACTED]. In [REDACTED] a section of the cemetery was designated as a section for burial of indigents and wards of [REDACTED] County. In [REDACTED] the original charter was revoked and in [REDACTED] the property was transferred to [REDACTED] who also owns and operates another cemetery in [REDACTED].

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SUR NAME		[REDACTED]					
DATE		7-23-81					

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

- "(A) Limit the purposes of such organization to one or more exempt purposes; and
- (B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

On the basis of the information furnished we conclude that you are not exempt from Federal Income Tax under Code section 501(c)(3) because you are not organized and operated exclusively for charitable, educational, or religious purposes. Also, since the cemetery is privately owned you are serving a private interest rather than a public purpose.

Section 501(c)(19) of the Internal Revenue Code exempts from taxation "certain cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit...."

Regulation 1.501(c)(19)-1 provides the following conditions for exemption as a cemetery company:

- "(a) A cemetery company may be entitled to exemption-
 - "1. If it is owned and operated exclusively for the benefit of its lot owners who hold such lots for bonafide burial purposes and not for purposes of resale, or
 - "2. If it is not operated for profit.
- "(b) Any cemetery corporation chartered solely for burial purposes and not permitted by its charter to engage in any business not necessarily incident to that purpose is exempt from income tax, provided that no part of its net earnings inures to the benefit of any private shareholder or individual."

[REDACTED]

On the basis of the information furnished we also conclude that you do not qualify for exemption under code section 501(c)(13) because you are performing services which benefit the private interests of the owner of the cemetery. Therefore, you are required to file Federal Income Tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892

cc: [REDACTED]